

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF COLORADO

HONORABLE A. BRUCE CAMPBELL

In re:)
)
ANNA SUCHKOVA) Case No. 05-17862 ABC
) Chapter 7
)
Debtor.)
)
In re:)
)
WILLIAM R. HOUNSOM) Case No. 05-42529 ABC
) Chapter 7
)
Debtor.)
)

ORDER ON TRUSTEE’S APPLICATIONS FOR AUTHORITY TO SELL

This matter is before the Court on the Applications of the Chapter 7 Trustee¹ in each of the cases captioned above to sell property of the estate free and clear of liens (“Applications”). Each Application suffers from the same deficiency and present an opportunity to provide the Chapter 7 Trustee for these cases and the Chapter 7 trustees, in general, with this Court’s views on such deficiencies, so that they might avoid compliance orders or variations on the proposed forms of orders they submit, if they are seeking an order of this Court authorizing them to sell property of the estate.²

In each of the cases captioned above, the Trustee applies to this Court for an order authorizing him to sell personal property of the estate “free and clear of liens.” In neither

¹The Chapter 7 trustee is the same for both cases which are the subject of this Order.

²Section 363 (b) of the Code authorizes a trustee to use, sell or lease property of the estate other than in the ordinary course of business “after notice and a hearing.” Thus, unlike other provisions of the Code which condition the trustee’s authority upon the obtaining an order or approval of the court (i.e. 11 U.S.C. § 364 and 11 U.S.C. §365), no order is required as a legal matter for the trustee to sell. As a practical matter, trustees and the purchasers’ of property of the estate may want an order of the court and, if this Court is called upon to issue such orders, it will endeavor to insure that the rights of all affected are protected as contemplated by the Code and the Rules prior to entering such orders.

Application, however, does the Trustee allege whether the personal property is subject to any liens or encumbrances, or, if there are any, who the lienholders are. Mere silence is not sufficient for this Court to presume the property is unencumbered. Thus, no order authorizing a sale “free and clear” within the meaning of section 363(f) of the Code can enter unless lienholders are identified and served with the motion and notice as provided for in the Federal Rules of Bankruptcy Procedure.

In addition, in the *In re Suchkova* case captioned above, the Notice pursuant to L.B.R. 202 fails to advise the creditors and parties in interest of the date and time of the sale as required by Fed.R.Bankr.P. 6004 and 2002(c)(1). Thus, this Court cannot approve the sale until a notice which complies with the requirement of the rules issues and affords the parties an opportunity to object. Accordingly, it is

ORDERED that a separate order will enter in the *In re Hounsom* case captioned above authorizing the Trustee to employ a sales agent and sell the personal property which is the subject of the Application; but the language that such a sale is “free and clear of liens” shall be stricken from the proposed form of order tendered by the Trustee with his Application; and it is

FURTHER ORDERED that in the *In re Suchkova* case captioned above, the Trustee is afforded a period of ten (10) days from the entry of this Order within which to: (a) file an amended application consistent with this order, *if* the Trustee wants an order authorizing the sale free and clear of liens; and/or (b) issue a notice which meets the requirements of Fed.R.Bankr.P. 6004 and 2002(c)(1), failing which the Application will be denied without prejudice.

DATED:

BY THE COURT:

A. Bruce Campbell,
U.S. Bankruptcy Judge